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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

BRIEF OF THE STATE OF FLORIDA IN OPPOSITION TO MOTION FOR JUDGMENT ON AMENDED COMPLAINT BY THE UNITED STATES

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CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND LAWS INVOLVED

This proceeding involves the title to and ownership of the lands beneath the Gulf of Mexico within the historical boundaries of the State of Florida and the natural resources within such lands and waters and the right and power to manage, administer, lease, develop and use such lands and natural resources. Florida's claim to such lands and natural resources depends upon the Submerged Lands Act of May 22, 1953 (43 U. S. C. Supp. V, 1301, et seq.), the material portions of which are set out on pages 333-338 of the plaintiff's brief. The validity, construction and application of the said Submerged Lands Act, as it applies to the defendant states generally and not specifically and severally are considered, argued and presented in the joint and common brief of the several defendant states and will not be here repeated either in whole or in part.

The term "lands beneath navigable waters," as used in the said Submerged Lands Act, includes those submerged lands beneath the Gulf of Mexico within the boundary of the State of Florida "as it existed **at the time such State became a member of the Union, or as heretofore approved by Congress,"** limited, however,

to not more than three marine leagues into the said Gulf of Mexico (43 U. S. C. Supp. V, 1301, subsection a-2; plaintiff's brief page 334). It is provided in section four of the said Submerged Lands Act that "nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided **by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.**" (43 U. S. C. Supp. V, 1312; plaintiff's brief page 337). (emphasis supplied).

The above quoted portions of the Submerged Lands Act recognize those historical boundaries of the Gulf States existing **"prior to or at the time such State became a member of the Union,"** or as **"approved by Congress" prior to May 22, 1953.** Florida contends that a boundary in excess of three geographical miles in the Gulf of Mexico existed under her constitution in force when she became a member of the Union (the Florida Constitution of 1838), and that a state boundary also in excess of three geographic miles was approved by the Congress in 1868 in connection with the reconstruction of the state following the Civil War.

Boundaries heretofore approved by Congress. —After the termination of the Civil War, Con-

gress by the Acts of March 2 and 22, 1867 (14 Stat. 428 and 15 Stat. 2, [appendix pages 1-8]) provided for the holding of state constitutional conventions in the rebel states, pursuant to which Florida caused to be prepared, submitted and adopted her State Constitution of 1868, which by Article I thereof fixed state boundaries as "commencing at the mouth of the river Perdido; from thence . . . , thence southwestwardly along the edge of the Gulf Stream and Florida reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from land; thence northwestwardly three leagues from land, to a point west of the mouth of the Perdido River; thence to the place of beginning." (appendix 18). This State Constitution was submitted to the Congress which, by the Act of June 25, 1868, (appendix 8-11) found that certain states, including Florida, had "framed constitutions of state government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same" and that such states were entitled to representation in Congress. This proceeding was an approval by the Congress of the boundaries of Florida as set out in her Constitution of 1868.

Boundaries of Florida at time of admission to the Union. — The Treaty of Amity, Settle-

ment and Limits, between the United States and Spain, of February 22, 1819, ceded to the United States (Article II thereof) "all the territories which belong to him situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said province," and in Article VI thereof further provided that "the inhabitants of the territories . . . shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution. . . ." Spain obtained the Floridas from Great Britain under the Definitive Treaty of Peace and Friendship of September 3, 1783, the King of Great Britain having, on October 7, 1763, by proclamation described the Floridas as being bounded by the Gulf of Mexico, "including all islands within six leagues of the seacoast" (see pages 313 and 314 of the plaintiff's brief). The Act of Congress of March 3, 1845 (5 Stat. 742) admitting Florida to the Union, in section five thereof, provided that "the said State of Florida shall embrace the Territories of East and West Florida, **which by the Treaty of Amity, Settlement and Limits** . . . was ceded to the United States" (emphasis supplied). The Florida Constitution of 1838 (the statehood constitution) provided, in Article XII thereof, that "the jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which, by the Treaty of Amity, Settle-

ment and Limits . . . were ceded to the United States. . . ."

QUESTIONS PRESENTED (FLORIDA)

First question.

Is the United States entitled, as against the State of Florida, to the lands, minerals and other things underlying the Gulf of Mexico, between a line three geographic miles seaward from the ordinary low-water mark and from the outer limits of inland waters on the coast, and a line three marine leagues from said low-water mark and outer limits of inland waters?

Second question.

Is the United States entitled to an accounting by the State of Florida for any sums of money derived by it after June 5, 1950, from such lands, minerals and other things lying off her coast?

STATEMENT OF THE CASE AS TO FLORIDA

Responding to the statement appearing in plaintiff's brief (pages 3-11), Florida maintains that the Congress in 1868 by appropriate proceeding approved the Florida Constitution of 1868 (reconstruction constitution) which contained the boundaries of the State of Flor-

ida including its three marine league boundary in the Gulf of Mexico (Article I thereof) which approval brought said three marine league boundary (historic boundary) within the purview of the Submerged Lands Act. This Act conveyed and transferred to the seacoast states title to "lands beneath navigable waters within the **boundaries** of the respective states, and the natural resources within such lands and waters, and the right and power to manage, administer, lease, develop and use the said lands and natural resources. . . ." The term "boundaries" as used in the said Act is defined by the said Act as including "the seaward boundaries of a state or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union or as heretofore (May 22, 1953) approved by Congress . . . ," limited, however, to not more than three leagues into the Gulf of Mexico. This statutory definition should be followed, as it supersedes commonly accepted dictionary or judicial definitions (50 Am. Jur. 254, section 262; 82 C. J. S. 536, section 315).

Florida's 1868 boundaries.—Florida's boundaries in the Gulf of Mexico were fixed, with the approval of the Congress of the United States, three marine leagues from the coast line or land, by her 1868 State Constitution, so that her rights under the Submerged Lands Act of

May 22, 1953, are measured by that boundary, the same being her historic boundary "heretofore approved by the Congress" within the purview and intent of the said Submerged Lands Act. The conveyance and transfer of property and property rights under the said Submerged Lands Act extend three marine leagues from the coast line and not merely three geographical miles.

Florida's boundaries at time of statehood.—Florida's state boundaries in the Gulf of Mexico, as it existed at the time she became a member of the Union, extended "over the Territories of East and West Florida, which, by the Treaty of Amity, Settlement and Limits, between the United States and His Catholic Majesty (Spain), on the 22nd day of February A. D. 1819, were ceded to the United States" (Florida State Constitution of 1838, Appendix 18; see also Act of March 3, 1845; 5 Stat. 742). Spain appears to have claimed a national boundary for her colonies in the Gulf of Mexico of three marine leagues from the coast line. Florida's state boundaries at the time she became a member of the Union extended three marine leagues into the Gulf of Mexico from the coast line.

SUMMARY OF FLORIDA'S ARGUMENT

The joint or common brief.—The defendant states have filed herein a joint or common brief

upon questions common to the said defendants which the State of Florida relies upon and adopts as her brief. In this separate brief of Florida we shall present and argue questions and points of law not applicable to all the defendants but applicable specifically to Florida.

Purpose of the Submerged Lands Act.—The language of the Submerged Lands Act, the entries in the Congressional Record and in Committee reports, both as to the Resolution which became the Submerged Lands Act and as to bills and resolutions upon the same subject matter submitted in the same and prior sessions of Congress, reveal a design and intention on the part of Congress to transfer and convey to the seacoast states the lands, minerals and other things in and underlying the sea, including the Gulf of Mexico, within historic boundaries, which said states had for many years prior to the decision in the California, Louisiana and Texas cases, considered as their property and administered the same as such. The Submerged Lands Act, from its own language, and from Congressional and Committee records and reports concerning it and like and similar legislation shows no intention by the Act to fix or establish state and national boundaries, but an intention to convey and transfer the lands, minerals and other things therein described from the United States to the states mentioned within their historical boundaries.

Property and property rights conveyed by the Act.—Section three of the Submerged Lands Act determined and declared it to be in the public interest that "title to and ownership of the lands beneath navigable waters within the boundaries (as defined in the said Act) of the respective states and natural resources within such lands and waters and the right and power to manage, administer, lease, develop and use such lands and natural resources, all in accordance with applicable state law" be vested in and assigned to the said states. The intent and purpose of the Submerged Lands Act was to transfer and convey the lands, minerals and other things in and underlying the sea within the historical boundaries of the states to them. There appears an intent to convey and transfer such property and property rights, although the same may be beyond the seaward international boundary of the United States, so long as such property is within the historical boundaries of the states as defined in the Submerged Lands Act.

Nature and purpose of international boundary.—The special property and property rights here considered lie in and under the waters of the sea, and such ownership does not in any way conflict with the enjoyment and the rights of navigation in the waters of the sea where such property and property rights are

located. A distinction has been drawn between the sea and its bed and the subsoil under the sea. The property and property rights here involved belong primarily to the subsoil under the sea, rather than the sea itself. The three mile international boundary, even if here applicable, relates only to the use of the high seas, including the use of the floor of the sea for the purposes of navigation, including the anchoring of boats and vessels, and does not constitute an absolute state or national boundary. It is a boundary limited for certain purposes. There may be boundaries for different functions and purposes.

State property beyond its boundaries.—Although a state owning land beyond its borders, as in another state, may not exercise governmental control over such lands, it does not follow that because it is not sovereign where it owns property that it may not be such an owner.

Establishment of state historic boundaries.—Not only are the seacoast states on the Gulf of Mexico permitted, under the Submerged Lands Act, to establish their **historic boundaries** as of the date they became members of the Union, but they are also permitted to establish any state boundary which prior to May 22, 1953, received Congressional approval, for the purpose of receiving the conveyance and transfer

from the United States as provided by said Act. Such an approval of a state boundary may be an implied one as well as an express and formal one. Upon the question of approval by Congress, within the purview of the Submerged Lands Act, we consider as a parallel the consent and approval by Congress of compacts between states under Clause 2, Section 3, Article IV, of the United States Constitution. This court has held in numerous cases that the approval or consent of Congress before a compact between states becomes effective may be an implied approval or consent and need not be an express one. The approval of the state constitutions under the Reconstruction Acts was no more sacred than that contemplated by said Clause 2, Section 3, Article IV, of the United States Constitution.

Florida Constitution of 1868. — When Congressional proceedings, committee reports, arguments of members, and other available records are taken into consideration it seems clear that the Florida Constitution of 1868 was duly approved by the Congress in 1868, within the intent and purview of the Submerged Lands Act of 1953. The Act of March 2, 1867, required that the rebel states, including Florida, frame new state constitutions and, after their approval by the people of the state, submit the same to the Congress, and further provided that

"when such constitution shall have been submitted to Congress for examination and **approval,** and Congress shall have **approved** the same," that such state be admitted to representation in the Congress. Florida submitted her Constitution of 1868 to Congress which constitution was approved by the Congress on June 25, 1868 (15 Stat. 73), and Florida was thereupon admitted to representation in Congress. The Florida Constitution of 1868, having been approved by Congress, within the intent and purview of the Submerged Lands Act, the state boundary therein set out and described was also approved by Congress.

Boundary at time of statehood.—The Act of Congress of March 3, 1845 (5 Stat. 742) admitting Florida as a state of the Union, described the said state as embracing "the Territories of East and West Florida, **which by the Treaty of Amity, Settlement and Limits, between the United States and Spain . . . were ceded to the United States"** (emphasis supplied). The Florida Constitution of 1838, being the constitution in force when admitted as a state of the Union, provided that the "jurisdiction of the State of Florida **shall extend over the Territories of East and West Florida, which** by the Treaty of Amity, Settlement and Limits . . . **were ceded to the United States"** on February 22, 1819 (emphasis supplied). The boundaries of the State

of Florida at the time of her admission as a state were coextensive with the territory ceded by Spain to the United States by the Treaty of Amity, Settlement and Limits of February 22, 1819. Spain claimed a seaward boundary in excess of three geographic miles in the Gulf of Mexico when she ceded the Floridas to the United States. Florida's seaward boundaries in the Gulf of Mexico at the time of statehood extended three marine leagues, or more, into the Gulf of Mexico.

ARGUMENT

First question.

IS THE UNITED STATES ENTITLED, AS AGAINST THE STATE OF FLORIDA, TO THE LANDS, MINERALS AND OTHER THINGS UNDERLYING THE GULF OF MEXICO, BETWEEN A LINE THREE GEOGRAPHIC MILES SEAWARD FROM THE ORDINARY LOW-WATER MARK AND FROM THE OUTER LIMITS OF INLAND WATERS ON THE COAST, AND A LINE THREE MARINE LEAGUES FROM SAID LOW-WATER MARK AND OUTER LIMITS OF INLAND WATERS?

Joint and common brief of the defendant states.—It is demonstrated by the joint and

common brief filed herein by the defendant states that "Under the Submerged Lands Act, the defendant states are entitled to submerged lands and natural resources extending to the States' 'historic boundaries' as defined in the Act, and these property rights are not limited to the national maritime boundary," (pages 5 to 47); and that "Neither International Law nor any National Boundary fixed a maximum three mile limit in the Gulf of Mexico at the relevant times prescribed by the Submerged Lands Act," (pages 67 to 143). These points will not be re-argued and presented by this defendant, the said joint and common brief being relied upon.

— A —

THE CONGRESS OF THE UNITED STATES, PRIOR TO THE EFFECTIVE DATE OF THE SUBMERGED LANDS ACT (MAY 22, 1953) APPROVED, WITHIN THE PURVIEW AND INTENT OF THE SAID SUBMERGED LANDS ACT, A SEAWARD BOUNDARY FOR THE STATE OF FLORIDA EXTENDING THREE OR MORE MARINE LEAGUES INTO THE GULF OF MEXICO.

1. A state's seaward historical boundary in the Gulf of Mexico, under the said Sub-

merged Lands Act, includes boundaries which have "been heretofore approved by Congress" by implication as well as by express or specific approval.

Florida's contention.—Florida says that her State Constitution of 1868 was approved, within the purview and intention of the Submerged Lands Act of 1953, by Congress expressly by the Act of June 25, 1868, as well as by implication. The action of the said Congress, under and pursuant to the Acts of Congress of March 2, 1867 (14 Stat. 428) and of March 22, 1867 (15 Stat. 1), in connection with and concerning the said Florida Constitution of 1868, constituted an implied approval of the said constitution, in addition to the approval by the said Act of June 25, 1868.

Statutory definition used.—The Submerged Lands Act of May 22, 1953, provides that the term "boundaries" as used therein "includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, **or as heretofore approved by Congress** . . . but in no event shall the term . . . be interpreted as extending from the coast line . . . more than three marine leagues in the Gulf of Mexico." (43 U. S. C. Supp. V, 1301). The said Act further provides that nothing "is to be con-

strued as **questioning** or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such state became a member of the Union or **if it has been heretofore approved by Congress.**" (43 U. S. C. Supp. V, 1312). From the above and foregoing it is readily apparent that Congress, by the Submerged Lands Act of 1953 intended to grant to the Gulf coastal states lands within their historical boundaries; or in other words, their boundaries as they existed when the states became members of the Union (as provided by their constitutions or laws prior to or at the time such states became members of the Union) **or as approved by Congress prior to May 22, 1953.** The above phrase **"has been heretofore approved by Congress"** is an important one and material in the consideration of Florida's rights under the said Submerged Lands Act.

Construing the phrase "heretofore approved by the Congress."—"The primary rule of construction of statutes is to ascertain and declare the intention of the legislature, and carry such intention into effect to the fullest degree" (50 Am. Jur. 200-203, section 223; see also 82 C. J. S. 560-571, section 321). Every Act of Congress making a grant is to be treated both as a law and a grant, and the **intent of Congress,** when

ascertained, is to control the interpretation of the law. The solution of these questions depends, of course, upon the construction given the act making the grants; and they are to receive such a construction as will carry out the **intent** of Congress . . . ." (Wisconsin Central Railroad Company v. Forsythe, 159 U. S. 46, text 55, 15 S. Ct. 1020, 40 L. ed. 71, text 74; see also Missouri, Kansas and Texas Railway Company v. Kansas Pacific Railway Company, 97 U. S. 491, text 497, 24 L. ed. 1095, text 1097). "The purpose of Congress is a dominant factor in determining the meaning" of an Act of the Congress (United States v. Congress of Industrial Organizations, 335 U. S. 106, text 110, 68 S. Ct. 1349, 92 L. ed. 1849, text 1856; see also Vermilya-Brown Company v. Connell, 335 U. S. 377, text 386; 69 S. Ct. 140, 93 L. ed. 78, text 85; Helvering v. Stockholms Enskilda Bank, 293 U. S. 84, text 94, 55 S. Ct. 50, 79 L. ed. 211, text 218). "Courts should construe laws in harmony with the **legislative intent** and seek to carry out the **legislative purpose** (Foster v. United States, 303 U. S. 118, text 120, 58 S. Ct. 424, 82 L. ed. 700, text 701).

Resort to legislative journals, records, reports, etc.—"In determining the proper construction of a statute, the decisions are substantially agreed that committee reports may be considered where the language of the statute

is ambiguous, and doubt as to its proper meaning exists. This rule has been applied to a supplemental report of a committee in charge of a bill, and even to a committee statement made after the enactment of the bill, as well as to conference reports" (50 Am. Jur. 325 and 326, section 334) and, "as a rule, it has been considered permissible, in the construction of a statute of doubtful meaning, to resort to statements by the members of the legislature, generally a committee member or chairman, having the bill in charge, the courts apparently regarding explanatory statements by such persons as being in the same category as committee reports, or as in the nature of supplemental reports (50 Am. Jur. 327, section 335). This court referred to reports of Senate and House Committees in the Congress, for purposes of construction of federal statutes and laws, in McLean v. United States, 226 U. S. 374, 33 S. Ct. 122, 57 L. ed. 260, text 263; Northern Pacific Railway Company v. State of Washington, 222 U. S. 370, text 380, 32 S. Ct. 160, 56 L. ed. 237, text 240; and Oceanic Steam Navigation Company v. Stranahan, 214 U. S. 320, text 333, 29 S. Ct. 671, 53 L. ed. 1013, text 1019. This court, in Harrison v. Northern Trust Company, 317 U. S. 476, text 479, 63 S. Ct. 361, 87 L. ed. 407, text 410, stated that "words are inexact tools at best and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter

how 'clear the words may appear on "superficial examination" '."

In United States v. American Trucking Association, 310 U. S. 534, text 542-544, 60 S. Ct. 1059, 84 L. ed. 1345, text 1350 and 1351, this Court said that "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. . . . Frequently, however, even when the meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislature, has said. Obviously, there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from

its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. . . ."

Congressional and Committee Reports. — House Report No. 215, accompanying H. R. 4198 of the 83rd Congress (now the Submerged Lands Act), and prior reports relating to like legislation in prior Sessions of the Congress, attached to said report as an appendix, as reflected by Legislative History Commentaries of the 83rd Congress, First Session, published by **West Publishing Company and Edward Thompson Company**, (page references are to this publication) states that (page 1387) Title II of the said Act "deals with the rights and claims by the states to the lands and resources beneath navigable waters **within their historic boundaries** and provides for their development by the states." Page 1388, under the heading of "Definitions," states that the term "boundaries" "includes the **historic seaward boundaries of the States** in the Atlantic Ocean, the Gulf of Mexico, or any of the Great Lakes, as they were upon entrance of the State into the Union or as has been or shall **be approved by Congress**. . . ." Page 1390, under the heading of "Title II, Lands Beneath Navigable Waters Within State Boundaries," after stating the general purpose of the said title, further states that it

does not "prejudice the existence of any State's historic seaward boundary into the . . . Gulf of Mexico . . . beyond these three miles **if it was so provided by any treaty of the United States, or any act of Congress, or the constitution or laws of a state prior to or when it entered the Union or has been or shall be approved by Congress. . . .**" Said House Report No. 215, in its "Preliminary Statement," states that "there is incorporated in this report, as an appendix, House Report No. 695 of the 82nd Congress, 1st Session. Said report contains a reprint of House Report No. 1778 of the 80th Congress, 2nd Session" (page 1385).

The following other extracts are taken from said House Report No. 695, to wit:

> (page 1399) "Title II, merely fixes the law of the land that which, throughout our history **prior to the Supreme Court decision in the California case in 1947, was generally believed to be the law of the land. . . .** Therefore, title II recognizes, confirms, vests, and establishes in the States the title to the submerged lands, **which they have long claimed,** over which they have exercised all the rights and attributes of ownership.
>
> "The areas affected by title II include . . . and submerged lands seaward from the

coast line for a distance of 3 miles or **to the original boundary line of any State in any case where such boundary at the time the State entered the Union extended more than 3 miles seaward."**

The following extracts are taken from said House Report No. 1778, to wit:

(Page 1417) "The purpose of H. R. 5992, like that of House Joint Resolution 225, which passed the Seventy-ninth Congress by a substantial majority but was vetoed by President Truman, is to confirm and establish the rights and claims of the 48 states, long asserted and enjoyed with the approval of the Federal Government, to the lands and resources beneath navigable waters **within their boundaries;** subject, however, to the right of the United States to exercise all of its constitutional regulatory powers over such lands and waters."

(page 1427). ". . . **In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement. . . .**"

Senate Joint Resolution No. 13, of the 83rd Congress, First Session, was substantially identical, if not identical, with House Resolution No. 4198, (now the Submerged Lands Act) of the same session. This being true, Senate Report No. 133, which accompanied said Senate Resolution No. 13, is of material value in construing the intent and purpose of the Congress in the adoption and enactment of the said Submerged Lands Act. Said Senate Report No. 133, in its explanation of the said resolution, states (page 1483) that said resolution, among other things,

> "provides that the right of ownership of lands and natural resources beneath navigable waters **within the historic boundaries of the respective states** are vested and assigned to the States. . . ."

This same report (page 1484) also states that section four of the said resolution recites,

> "it is also provided that this section is without prejudice to the existence of a State's boundary beyond the 3 mile limit, if it was so provided prior to or at the time such State entered the Union, **or if it has been heretofore or hereafter approved by Congress."**

Said Senate Report No. 133 has attached thereto as Appendix "E" a copy of Senate Report No.

1592, which accompanied Senate Bill 1988, 80th Congress, 2nd Session, wherein it was stated, under the heading, "Recognizance of State Ownership by Congress," that:

> "**In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending three marine leagues seaward and a like distance into the Gulf of Mexico.** Texas' boundary was fixed 3 leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by annexation agreement. . . ." (page 1516, West Publishing Company, et al., publication).

Reference is made to a like statement in House Report No. 1778 above mentioned.

Arguments and testimony before Congress.

—Senate Joint Resolution No. 13, of the 83rd Congress, First Session, if not a companion bill to House Resolution No. 4198, of the same Congress and Session (now the Submerged Lands Act), was a substantial identical copy thereof, so that any discussions or testimony at committee hearings on said Resolution No. 13, are here material in construing the said Submerged Lands Act. At hearings held by the Committee on Interior and Insular Affairs of the United

States Senate on February 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, and March 2, 3 and 4, 1953, the following transactions occurred (page references are to the official committee report as printed for the use of the committee):

1. (page 34). SENATOR HOLLAND, of Florida ". . . I want to make it very clear that my bill does not apply to that entire area shown in blue upon the map, but it applies instead to only 3 miles in area lying off all States but two, and in the case of Texas applies to 3 leagues, or nearly 10 1/2 miles, and in the case of Florida has two different applications, 3 miles all down our Atlantic coastline and around the Straits of Florida and back to the mainland, **and 3 leagues or nearly 10 1/2 miles** for the rest of Florida.

"By way of explanation at this time, the reason there is this difference in the case of the coastline of Texas and a portion of the coastline of Florida is that the constitutions of those two States appear 3 leagues out, as I have stated in my statement; that is, over the entire coastline of Texas and over a portion, something more than a third of the coastline of Florida."

* * * * *

"The questions presented by Senate Joint Resolution 13 have been fully considered by Congress several times, and I believe that this legislation, which relates solely to property within the States' boundaries, can be speedily passed if left unencumbered by other problems. It will be noted that this bill relates to offshore lands beyond the 3-mile limit in only two cases, the west coast of Florida and the coast of Texas, . . . **which States have, under their constitutions, boundaries extending 3 leagues into the Gulf of Mexico. . .**"

2. (Page 48). SENATOR HOLLAND.

". . . But the language of the bill is perfectly clear that it is the constitutional boundaries, and it is the historic boundaries, and it is a case of restoration and establishment to States of what lie within their boundaries of jurisdiction, of criminal law and of various other kinds of law, boundaries which fix the venues of cases which arise. We want to go back to the fundamental theory that the States have rights in the assets found in their own areas in these submerged lands."

3. (page 50) SENATOR HOLLAND.

". . . I would like the record to show that

there is 3.45 land miles, which would apply in every place to all States except as to the 2 States, 1 of which, Texas, has a 3-league limitation in its own constitution, extending all across that State's front on the Gulf; **and the State of Florida, which has a 3-league limitation extending over a portion, something more than a third of its frontage, being frontage on the Gulf of Mexico."**

4. (page 57) SENATOR HOLLAND.

"The Constitution of the State of Florida, adopted February 25, 1868, approved by Congress April 14, 1868, and ratified by the people of Florida May 4-6, 1868, **fixing the State boundaries on the west coast in the Gulf of Mexico at three leagues from the land,** presents still another variation. The constitutions of the Original Thirteen States present still further and varied problems in this regard."

5. (page 72) SENATOR HOLLAND.

"In this instance I simply call attention to the fact that we are dealing, under my bill at least, with a narrow, strangling cord of land and water, generally 3 miles wide, never more than 10½ miles wide, 5,000 miles long, extending from the upper border of Maine clear down the Atlantic coast,

back through the gulf, and then up the Pacific, which must become either a part of the States upon which it bounds and the coastal communities which it must serve."

6. (Pages 212, et seq.) Texas Special Title. Note discussion between Senator Daniel (of Texas) and Senator Anderson (of New Mexico) concerning Texas' claim to a three league seaward boundary.

7. (Page 411) SENATOR DANIEL, of Texas.

"I may say the Republic of Mexico is claiming the same distance out into the Gulf as the State of Texas **and the State of Florida, with approval by the United States Congress.**

"The matter of 9 miles or 10½ miles all depends upon whether you are talking about geographic miles or statutory miles, I believe it is. Anyway, we are claiming the same distance; actually 3 leagues is equal to 10½ statutory miles."

8. (Page 931) While Attorney General Brownell was before the Committee for the purpose of making a statement and testifying (pages 925, et seq.), the following exchange occurred between Senator Anderson and the Attorney General:

Senator Anderson . . . "The Secretary of the Interior said: 'I think the Attorney General's idea would probably be more accurate than the Secretary of the Interior . . .' Since he has qualified you as a witness he would like to have you testify on this, can you give us any idea whether you would follow, for example, the Boggs formula?"

Attorney General Brownell: "Our thoughts generally, Senator, without going into great detail, is that this line would be **three miles out, except in the cases of Texas and the West Coast of Florida.**"

At a hearing before Subcommittee No. 1, Committee on the Judiciary, House of Representatives, on House Resolution 2948, and Similar Bills (all similar and substantially identical with the present Submerged Lands Act), on February 17 and 26 and March 3, 4 and 5, 1953 (Serial No. 1, printed for the use of the Committee on the Judiciary), the following transactions took place:

1. (page 181) Statement and testimony of HON. DOUGLAS McKAY, Secretary of the Interior.

   "**Mr. Graham**: Mr. Celler, have you any questions?

Mr. Celler: Yes; I have a few questions.

Mr. Secretary, I believe your statement, if I may be privileged to sum it up, says that the **right of disposal lies in the Federal Government concerning the lands submerged under the sea** seaward from the limitations of the State boundaries; is that correct?

Secretary McKay: Yes, sir, of the historic boundaries. In most cases of these States, it is three miles to sea, **except in Texas and Florida, where it is, of course, 3 leagues."**

2. (Pages 188 and 189) **Mr. Wilson.**

"I was speaking, particularly with regard to outside the State boundaries of 10½ miles of Texas and Florida, and 3 miles for the rest of the States. **Historical boundaries** are what we are talking about. I say outside the **historical boundaries.**

Mr. Celler: "Would it not be more consistent with what you just said that instead of using the term **'historical boundaries,'** you would use the boundaries as claimed by the States?

Secretary McKay: "No. I cannot agree with that. The **historical boundaries** have been established for 100 years or more, from the time the State came into the Nation.

Mr. Celler: "Then you are limiting the claim of the States to **historic boundaries** that have existed over the years?

Secretary McKay: "I have not made any statement on the claims of the States.

Mr. Celler: "What do you mean by **historic boundaries?** This is what I am trying to get at.

Secretary McKay: "The **historic boundaries** have been recognized by the States, in the case of my State for 94 years, when we came into the Union with the description that we came in with. With Texas, they came in by a treaty as a Republic. Those are **historic boundaries.** I do not think there is any question about that."

Meaning and purpose of "boundaries" as used in the Submerged Lands Act.—Congress, by section three of the Submerged Lands Act (section 1311, title 43, United States Code; 67 Stat. 30), "determined and declared (it) to be in the public interest that (1) title to and owner-

ship of the lands beneath navigable waters within the **boundaries** of the respective States, and the natural resources within such lands and waters and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established and vested in and assigned to the respective states . . ." The term "boundaries," as used in the Submerged Lands Act, is defined by Congress (section two of the said Act; section 1301, title 43, United States Code; 67 Stat. 29), as including "the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as heretofore approved by the Congress . . ."

Although section four of the said Submerged Lands Act (section 1312, title 43, United States Code; 67 Stat. 31) approves the seaward boundary of each original state as a line three geographical miles seaward of the coast line, the said section further provides that nothing therein "is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles, . . . **if it has been heretofore approved by Congress.**" The Submerged Lands Act uses the term "boundaries" in the sense expressed in the above mentioned Congressional definition of the

term, and not generally. The reference is not to the international boundary but to a "historical" boundary as described in the State Constitution or laws at or prior to the time such State became a member of the Union or **as it may have been subsequently approved by Congress.** All the evidence relative to the meaning of the Submerged Lands Act, all of the contemporaneous utterances concerning its objectives clearly and convincingly beyond cavil point to an unmistakable target in so far as Florida is concerned, viz, Congressional approval in 1868 of its three marine league seaward boundary in the Gulf of Mexico.

We submit that in approving Florida's 1868 Constitution containing the three marine league boundary in the Gulf of Mexico, Congress expressly and directly approved such boundary in every real sense—and even technically it approved this boundary. To deny it by asserting that it must have been approved as a separate item is to split hairs. In the law of contracts, in common every day understanding, when a document has been approved by a contracting party it is approved in toto and not in part. We believe the Government's case is built upon more than one very tenuous foundation and its claim that the Congress did not approve Florida's Constitutional boundary in its 1868 Constitution is one of them.

Not only did the Congress in 1868 approve Florida's Constitution containing said three marine league boundary without question or reservation then, but in the ninety years ensuing Congress has never questioned it and expressly recites it does not question its existence in the Submerged Lands Act.

Construction of term "heretofore approved by the Congress."—While we contend that in approving Florida's 1868 Constitution, Congress expressly approved the boundary provisions therein fixing a three marine league line in the Gulf of Mexico, there are also many authorities indicating that such approval may be implied. Although the United States Constitution requires that compacts between states have the consent of Congress before they are effective, it has been held that **such consent may be implied from circumstances** (Clause 3, Section 10, Article I, United States Constitution; Wharton v. Wise, 153 U. S. 155, text 172 and 173, 14 S. Ct. 783, 38 L. ed. 669, text 676; Virginia v. Tennessee, 148 U. S. 503, text 521 and 522, 13 S. Ct. 728, 37 L. ed. 537, text 543 and 544; Virginia v. West Virginia, 78 U. S. 39, text 59-61, 20 L. ed. 67, text 72 and 73; Green v. Biddle, 21 U. S. 1, text 85-87, 5 L. ed. 547, text 568 and 569). In Virginia v. Tennessee, supra, the court remarked that "Story says that the consent may be implied, **and is always to be implied when Con-**

gress adopts the particular act by sanctioning its objects and aiding in enforcing them." The provision in the Submerged Lands Act for the establishment of a State's seaward boundaries beyond three geographical miles, but within three leagues, where such a boundary was "heretofore approved by Congress," does not seem to be any more specific than the provision in Clause 3, Section 10, Article I, of the United States Constitution, that "no state shall, **without the consent of Congress,** . . . enter into any Agreement or Compact with another State . . . ." If the consent or approval of Congress may, under said Clause 3, Section 10, Article I, of the United States Constitution, be an implied one, then why should **the approval by Congress,** mentioned in the Submerged Lands Act, be an express approval only and not an implied one. The requirements of the statute do not seem to be any more specific than that of the said constitutional provision. These observations lead to the conclusion that the statutory requirement that the boundary claimed by a state beyond the three mile limit be one that "has been heretofore approved by Congress," may be **an implied approval** determined from existing facts and circumstances. Consent to a compact between states may be implied and is always to be implied when Congress adopts the particular act by sanctioning its objects and aiding in enforcing it (Virginia v. Tennessee, 148 U.S. 503, text

521 and 522, 13 S. Ct. 728, 37 L. ed. 537, text 543 and 544). In Wharton v. Wise, 153 U. S. 155, text 172 and 173, 14 S. Ct. 783, 38 L. ed. 669, text 676, Congress approved an award made by arbitrators pursuant to agreement for an arbitration between two states; this approval was held sufficient as an approval of the compact to make it valid. The States of Florida and Georgia, in 1859, enacted like laws providing for a survey of the boundary between the two states; however, no formal approval of the compact or agreement between the states by Congress was made; however, in 1872, Congress passed an act to quiet title to lands in which the said boundary line was recognized, and this action on the part of the Congress was held, by the Supreme Court of Florida, in Groover v. Coffee, 19 Fla. 61, text 76 and 77, to have been an implied approval of the compact between the states for the location of the boundary between them. If a matter as formal as a compact between states may receive an implied approval or consent on the part of the Congress, then it would seem to follow that the "approval of Congress" contemplated by the Submerged Lands Act may likewise be by implied approval.

State ownership of property beyond its boundaries.—The government, on pages 13, et seq., of its Brief, seems to assume the position that a state may not take title to and own and possess

property and property rights beyond the so-called international boundary; that the Congress was without authority to grant submerged lands, minerals and other things not located within international boundaries to the states. The authorities bear out the right of a state to own, possess, and operate property and property rights beyond its boundaries (81 C. J. S. 1077, section 104). In Mettet v. City of Yankton, 71 S. D. 435, 25 N. W. 2d 460, text 466, it is stated that the State of South Dakota "has the power to hold property, real or personal, in the State of Nebraska," citing with approval the cases of McLaughlin v. City of Chattanooga, 180 Tenn. 638, 177 S. W. 2d 823, and Dodge v. Briggs, C. C., 27 Fed. 160. In Lester v. Jackson, 69 Miss. 887, text 890, 11 So. 114, text 115, the Court stated that "one state may own land in another, but it can exercise no governmental control over it . . . but it does not follow that because it may not be sovereign it may not be owner." This quotation from the Mississippi case was quoted with approval in McLaughlin v. Chattanooga, supra. This Court, in Georgia v. Chattanooga, 264 U. S. 472, 44 S. Ct. 369, 68 L. ed. 796, recognized the right of the State of Georgia to purchase, own and use property in the State of Tennessee for railroad purposes. The power and right of one state to own and use property in another state was recognized in Wayne County Court v. Louisa & Fort Gay Bridge Company,

DC W. Va. 46 Fed. Supp. 1, text 2; Burbank v. Fay, 65 N. Y. 57, text 62; Florida State Hospital v. Durhan Iron Company, 194 Ga. 350, 21 S. E. 2d 216, text 219; State v. City of Hudson, 231 Minn. 127, 42 N. W. 2d 546, text 548; and State v. Bentley, 216 Minn. 146, 12 N. W. 2d 347, text 357.

The Congress of the United States, under Clause 2, Section 3, Article IV, of the United States Constitution, is given "power to dispose of . . . the territory or other property belonging to the United States . . . ." This constitutional power is not limited as to location of the property to be disposed of. The United States, through Congress, was empowered by the above constitutional provision to transfer the property and property rights described in the Submerged Lands Act to the states named without regard to location with relation to present state boundaries, if otherwise than their historical boundaries.

Conclusion.—Not only are the states permitted to establish their boundaries as of the date they became a member of the Union, for the purpose of receiving the conveyance and transfer of the properties and property rights mentioned in the Submerged Lands Act, but they are also permitted to establish, for the same purpose, any other boundary, or even the same

boundary, **that was, prior to May 22, 1953** (the effective date of the Act), **approved by the Congress.** There seems little difference legally between the requirement of approval by Congress, under the terms of the Submerged Lands Act, and the consent or approval by Congress to compacts between states, under Clause 3, Section 10, Article I, of the United States Constitution. This Court has held in numerous cases that the approval or consent required of Congress before a compact between states becomes effective may be an implied approval or consent and need not be an express one. We, therefore, submit that express or specific approval by the Congress is not required but an approval by Congress may be an implied one from all circumstances. That such an approval of a state's boundaries is effective and the conveyance of the property and property rights valid even if beyond present state boundaries.

2. The Congress of the United States, prior to May 22, 1953, approved the boundaries of the State of Florida as described in Article I, of the Florida Constitution of 1868.

Boundaries in 1868 Florida Constitution.— Article I, of the Florida Constitution of 1868, in so far as here material, described the boundaries of the State of Florida as "commencing

at the mouth of the river Perdido; from thence . . . down the middle of said (St. Mary's) river to the Atlantic ocean; hence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs **to and including the Tortugas islands;** thence northwestwardly **to a point three leagues** from the mainland; thence northwestwardly **three leagues** from land, to a point west of the mouth of the Perdido river; thence to the place of beginning."

The Submerged Lands Act, in sections two and four thereof recognizes historical state boundaries in the Gulf of Mexico which were **"heretofore approved by Congress,"** that is, approved prior to May 22, 1953. It is expressly provided in said act that nothing in section four thereof "is to be construed as **questioning** or in any way prejudicing the existence of any State's eastward boundary beyond three geographical miles . . . **if it has been heretofore approved by Congress.** The quantity of the property and property rights conveyed and transferred to the Gulf coastal states, by the Submerged Lands Act, is measured by the boundaries described in the said act; that is, the boundaries as provided in their constitutions or laws when the state became a member of the Union, **or the boundaries as approved by Congress some time prior to the effective date of the Submerged**

Lands Act, that is, May 22, 1953. We have hereinabove demonstrated that the phrase "as heretofore approved by Congress," has been satisfied by an express approval by Congress as well as by an implied approval. Such an approval may be implied from circumstances and incidental acts and proceedings by Congress.

Congressional intent controlling.—We have hereinabove demonstrated that the intention of Congress, when it enacts a statute or law, is the guiding star from which the meaning and intent of the statute or law is to be determined; and that in determining congressional intent resort may be had to the Congressional Record, committee and other reports, argument of members of Congress, and other public records. Congress, instead of delineating the specific boundaries within which the properties and property rights conveyed and transferred are located, has used the historic boundaries of the states as the measure of transfer.

Reconstruction Acts.—The act of March 2, 1867 (14 Stat. 428) provided that "when the people of any one of said rebel states shall have formed a constitution of government in conformity with the constitution of the United States" and have done and performed certain mentioned other things, "and when such constitutions shall have been ratified by a majority

of the persons voting on the question of ratification, and **when such constitution shall have been submitted to Congress for examination and approval and Congress shall have approved the same,"** and when the said states have met certain other requirements, "said state shall be declared entitled to representation in Congress and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law. . . ." This act was supplemented by the Act of Congress of March 22, 1867 (15 Stat. 1) as to qualification and registration of electors, and specifically provided that "if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the state, and if the said constitution shall be declared by the Congress to be in conformity with the provisions of the act to which this is supplementary . . . **and the said constitution shall be approved by Congress,** the state shall be declared entitled to representation . . . ." Both of these acts clearly contemplated the examination and **approval** of the constitutions by Congress before the rebel states would be entitled to further representation in the Congress, which approval may be an implied one.

Florida's constitutional convention of 1868.— Following the above reconstruction acts and pursuant to and in compliance therewith Flor-

ida caused a constitutional convention to be assembled on January 20, 1868, at which convention a state constitution was drafted, approved and submitted to the people for adoption or rejection, all as required by the reconstruction acts and in compliance therewith (appendix 11-23). The constitution so proposed and submitted was adopted by the people of Florida, after which it was, in accordance with the reconstruction acts, submitted to Congress (appendix 15-23), and by it received, ordered printed and was printed as a part of House Miscellaneous Document No. 297, of the 2nd Session of the 40th Congress (see also House Miscellaneous Document No. 114 of the same Congress and Session).

Florida's Constitution of 1868 submitted to Congress and approved.—After the Florida Constitution of 1868 was submitted to Congress and received by it, it underwent exhaustive and complete consideration and discussion in the Congress (Congressional Globe of the 40th Congress, second Session, pages 2073, et seq.). Under section five of the Act of Congress of March 22, 1867 (15 Stat. 1) where a state constitution was submitted to Congress and "the Congress shall be satisfied that such constitution meets the approval of all the qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions

of the act to which this is supplementary (act of March 2, 1867) ... **and the said constitution shall be approved by Congress,** the State shall be declared entitled to representation." Congress by its preamble to the Act of June 25, 1868 (15 Stat. 73), determined that the State of Florida, together with other named states, had "framed constitutions of State Government which are republican ...." and were entitled to representation in Congress as soon as they met certain other requirements of the said statutes.

The said Act of Congress of June 25, 1868 (15 Stat. 73), in its preamble recites that,

> "Whereas, the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama and **Florida** have, in pursuance of the provisions of an act entitled 'An Act for the more efficient government of the rebel states,' passed March 2, 1867, and the acts supplementary thereto, **framed constitutions of state government which are republican,** and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same ...."

and then enacted,

"That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida, **shall be entitled and admitted to representation in Congress as a State of the Union** when the legislature of such State shall have ratified the amendments to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen . . . " (emphasis supplied).

One of the requirements of the reconstruction acts was that the state constitutions adopted should be sent to Congress for its **approval.** The act of March 2, 1867, provided that before the rebel states would be entitled to representation in Congress that their state constitutions should be "submitted to Congress for examination and approval." The act of March 2, 1867, and likewise the act of March 22, 1867, provided that when **Congress shall approve** the state constitutions that they shall be admitted to representation in Congress. Records reveal that the delegation from Florida to the Congress was sworn in and seated on June 30 and July 1, 1868. Congress thus enforced the condition of the acts of March 2 and 22, 1867, and the constitutions of the states received **Congressional approval** before their delegations were admitted to seats in Congress.

The Congressional proceedings (Congressional Globe for 1868, pages 3090-3097) show that the Florida Constitution of 1868 came in for detailed consideration by Congress and was discussed both pro and con (appendix 56-76). After due consideration and extensive discussion of the Florida constitution of 1868 by Congress, as well as the constitutions of other states, the Act of Congress of June 25, 1868, supra, was adopted (15 Stat. 73).

Evidence that the Florida Constitution of 1868 was approved by Congress.—In addition to the above mentioned items of evidence, taken from the Congressional Globe, the following other extracts from the Congressional Globe for the legislative years of 1867 and 1868 seem to further confirm the view that Congress **approved** the Florida Constitution of 1868. Under the reconstruction acts **approval by Congress** of State Constitutions was a condition to representation in Congress; Florida was admitted to representation in Congress in 1868.

1. **The Veto Message.**—The Act of Congress of March 2, 1867 (14 Stat. 428) was passed over the veto of the President. One of the objections to the bill, by the President in his veto message, was that "another Congress must first **approve the constitutions** made in conformity with the will of this

Congress, and must declare these states entitled to representation in both houses . . . ." (Congressional Globe of March 2, 1867, page 1971; appendix 46).

2. **Mr. Pruyn,** on May 14, 1868, addressing himself to the reconstruction acts and the state constitutions adopted and submitted to Congress thereunder remarked, "But, sir, the views were boldly carried out and we have the result now before us as far as it has been reached in this direction in the shape of these constitutions **now presented for our approval.** (May 14, 1868, Congressional Globe, 261; appendix 48).

3. **Mr. Woodbridge,** on May 14, 1868, remarked that the state constitutions adopted under the reconstruction acts, in compliance with such acts, "should be approved by Congress and the state admitted to representation." And on the same day further remarked that "those constitutions have been printed and laid before us. We have looked at them; **we have pronounced them republican in form;** and all we propose to require is that they remain so forever." (May 14, 1868, Congressional Globe, 2463 and 2465; appendix 48 and 49).

4. **On June 12, 1868, the Florida Consti-**

tution of 1868 came in for extensive consideration and argument, showing clearly that the said constitution received considerable study and was extensively discussed by the Congress before the enactment of the act of June 25, 1868 (15 Stat. 74), (June 12, 1868, Congressional Globe, 3090-3097; appendix 56 to 75).

5. **Mr. Trumbull,** on June 30, 1868, remarked that "we have settled by an act which we passed a few days ago the condition of Florida. We have declared that that state, **under a constitution which was submitted to us and examined, was entitled to representation in Congress when she ratified the constitutional amendment known as article fourteen. That act has passed both houses and is now the law of the land."** (June 30, 1868, Congressional Globe, 3601; appendix 76). He further remarked, on the same day, that Florida and certain other states had ratified constitutions **in accordance with the reconstruction acts** (June 30, 1868, Congressional Globe, 3602; appendix 76).

6. **The Attorney General of the United States** (Hon. E. R. Hoar) on October 5, 1869, advised the President of the United States, concerning an application to cause an arti-

cle in a state constitution concerning apportionment of representation (in another state) to be submitted and voted on separately from the remainder of the said constitution, that, "the provision for the apportionment of representation is an essential part of any constitution. If that part were submitted separately and rejected, there would be no frame of government adopted for the state, the rest of the constitution not being sufficient to constitute a frame of government." (XIII Opinions Attorney General 156).

The omission of a state's boundaries from a state constitution would likewise be the omission of an essential part of a state constitution. A state constitution without a description of the boundaries of the state would likewise be insufficient as a frame of state government. Doubtless the reconstruction acts contemplated that the state constitutions to be framed be complete and not incomplete constitutions; and that they should be examined and approved by Congress as complete frames for state government.

7. **The Attorney General of the United States** (Hon. E. R. Hoar) on August 28, 1869, advised the Secretary of War, in part

as follows:

"I am of the opinion, therefore, that it may come together, organize, and act upon that amendment; but that, **until Congress shall have approved the constitution** and the action under it, and shall have restored the State form of government as republican, and admitting it to representation, the legislature is not entitled and could not, without violation of law, be allowed to transact any business, pass any act . . . ." (XIII Opinions Attorney General 135).

8. **Louis V. Caziarc, Acting Adjutant General, of the First Military District,** on June 4, 1869, advised W. C. Rice, Burgess Store, Virginia, that the state constitution of Virginia did not become the organic law of the state "until after it had been ratified by the people of the state and **approved by the Congress of the United States."** (Executive Document No. 13, pages 94 and 95, 2nd Session, 40th Congress).

9. **Major General George C. Meade,** in his report to General Grant, under date of October 31, 1868, said, concerning the Florida constitutional convention and Constitution of 1868, in part that,

"The compromise proposition having been accepted, the two parts of the convention assembled, reorganized and proceeded to frame a constitution, which was subsequently ratified by the people and **adopted by Congress.**" (Executive Document No. 13, 2nd Session, 41st Congress, page 25).

10. **Hon. Ed. R. S. Canby, Brevet Major General Headquarters First Military District,** on July 10, 1869, advised the Adjutant General, Washington, D. C., in part, that:

"The laws of June 25, 1868, **approving the constitution of several States** and authorizing certain action under them," had certain effects. General Canby further advised that it was clearly the intention of Congress that the requirements of the reconstruction laws **"should be enforced until the constitution had been examined and approved by that body,"** that is, Congress. He then finds that certain military orders or decisions "were made subsequent to the passage of the law **of June 25, 1868, and applied to the constitutions which had already been approved by Congress** . . . ." Reference is also made to test oaths **"after the approval by Congress of the proposed constitution."** Reference is also made to a post-

ponement of the meeting of the legislature of South Carolina "until after the **Congress shall have approved the constitution under which it** (the legislature) **was elected** . . . . (Executive Document No. 13, 2nd Session, 41st Congress, pages 18 and 19; appendix 79-81).

There seems to run through this entire letter **the idea of an approval** by Congress of all state constitutions formed, submitted and adopted pursuant to and under the requirements of the reconstruction statutes and laws.

11. **General Canby,** on June 26, 1869, advised Mr. B. M. Gillis, Richmond, Virginia, in part, also as follows:

"That state officers should be required to take the oath prescribed by the Act of Congress of July 2, 1862, **unless the constitution should first be approved by Congress,"** meaning constitutions submitted and adopted under and pursuant to the reconstruction laws. He then further states that "I have heretofore held and do now hold that **the approval by Congress of any proposed constitution makes it a part of the reconstruction laws** . . . ." He further also states that **"the law of June 25, 1868, ap-**

proving the constitutions of several states, and authorizing specific action under them, was regarded by me as dispensing with the oath of office prescribed by the law of July 2, 1862 . . . ." Also, that "the qualification of the officers rests upon the same basis, and must be governed by the reconstruction laws until the constitution becomes the controlling law, and this does not obtain **until it has been approved by Congress** . . . ." (Executive Document No. 13, 2nd Session, 41st Congress, 20-22; appendix 83-85).

12. **The Circuit Court of Appeals, Fifth Circuit** (before Sibley, Hutcheson and Holmes), in Cunningham, Sheriff, v. Skiriotes (1939), 101 Fed. 2d 635, relative to the boundary of Florida in the Gulf of Mexico, stated that:

". . . It first appeared in the Constitution of 1868, **which was approved by Congress in readmitting Florida to the United States, and was repeated in the present Constitution of 1885.** So far as we are advised, the State of Florida has claimed without objection from any source jurisdiction over the western littoral waters accordingly for seventy years, and has exercised it under the statute here in question for the past twenty years . . . ."

13. **The District Court of the Northern District of Florida** (three judge court composed of Bryan, Circuit Judge, and Akerman and Long, District Judges) in Pope v. Blanton, 10 Fed. Supp. 18, after assuming (but not deciding) that Florida's boundary under the treaty with Spain and under her statehood act and prior to the adoption of the 1868 State Constitution was three geographic miles or one marine league, stated that "there is no rule of law to prevent the state, with the approval of Congress, from fixing the boundaries. It may be that it is usual to do this at the time of admission into the Union, but that does not signify that it cannot be done at any other time by agreement between the State and Congress, so long as the change does not affect the territory of another state . . . . In this particular case, however, while Florida was not admitted to the Union after the conflict between the states, **it was required by Congress to adopt a new constitution . . . , in which constitution one of the boundaries was changed from one league from the mainland to three leagues in the Gulf of Mexico . . . . The Congress accepted this Constitution of 1868 by the passage of Act of June 25, 1868, reciting that the state had adopted a Constitution in accordance with the Act of March**

2, 1867 .... The consent of Congress need not be expressed, and this may appear subsequently as well as at the time .... The Constitution of 1885 is identical in description of the boundary of the State as set out in the Constitution of 1868, which Constitution was approved by Congress." (emphasis supplied).

14. **Mr. Trumbull,** on June 8, 1868, stated in part that "the other states ... and Florida have all adopted constitutions in accordance with the reconstruction acts and have sent their constitutions here; they have ratified these constitutions by a vote of the people in accordance with the reconstruction acts." (appendix 54).

15.* **Senator Holland,** in his statement before Congress and its Committees, made the following material comments in this connection:

"I want to make it very clear that my bill ... applies ... **to only three miles in area lying off all States but two, and in the case**

*Items numbered 15 to 20 hereof reflect the contemporaneous thinking of interested persons appearing before committees considering the Submerged Lands Act or similar acts upon the question of the approval of the Florida Constitution of 1868 by Congress.

of Texas applies to three leagues or nearly 10½ miles, and in the case of Florida has two different applications, three miles all down our Atlantic coastline and around the Straits of Florida and back to the mainland, and three leagues or nearly 10½ miles for the rest of Florida.

"By way of explanation at this time, the reason there is this difference . . . is that **the constitutions of those two states** include provisions that the limits of those two states appear three leagues out . . . that is, over the entire coastline of Texas and over a portion, something more than a third of the coastline of Florida. . . ." (appendix 32 and 33).

". . . I would like the record to show that that is 3.45 miles, which would apply in every place to all States **except as to the two States, one of which, Texas, has a three league limitation in its own constitution, extending all across the State's front on the Gulf; and the State of Florida, which has a three-league limitation extending over a portion, something more than a third of its frontage, being frontage on the Gulf of Mexico.** . . . (appendix 35).

". . . But the language of the bill is per-

fectly clear in that it is the constitutional boundaries, **and it is the historic boundaries** and it is a case of restoration and establishment to States of what lie within their boundaries of jurisdiction, of criminal laws and of various other kinds of laws, boundaries which fix the venue of cases which arise. . . ." (page 48, record of hearing of February 16, 1953 before the Committee on Interior and Insular Affairs, United States Senate).

"The Constitution of the State of Florida, adopted February 25, 1868, approved by Congress April 14, 1868, and ratified by the people of Florida May 4-6, 1868, fixing the state boundaries on the west coast in the Gulf of Mexico at three leagues from the land, presents still another variation. The constitutions of the original thirteen States present still further and varied problems in this regard. . . ." (page 57, record of committee hearing, supra).

16. **Senator Price Daniel,** in his statement before Congress and its Committees, made the following material comments in this connection:

". . . the International Boundary Commission between the United States and

Mexico actually ran our international boundary between the two nations three leagues out into the Gulf of Mexico, in accordance with the Treaty of Guadalupe Hidalgo.

"I may say the Republic of Mexico is claiming the same distance out into the Gulf as the State of Texas and the **State of Florida, with approval by the United States Congress.**

"The matter of nine miles or ten and one-half miles all depends upon whether you are talking about geographic miles or statutory miles. I believe it is. Anyway, we are claiming the same distance; actually three leagues or ten and one-half statutory miles . . ." (appendix 36-37).

17. **Hon. Frank G. Millard,** Attorney General of Michigan, in his statement before the above mentioned committee, stated that,

"The Holland Bill (substantially identical with the Submerged Lands Act) simply recognizes the long-established good-faith claims of all the forty-eight States and establishes, confirms, and restores to every State in the Union the ownership and con-

trol of all this type of property located within their respective **historic boundaries.**" (appendix 56).

18. **Hon. Douglas McKay,** Secretary of the Interior, in 1953, stated before the above mentioned committee, as follows:

Secretary McKay: "Yes, sir, of the historic boundaries. In most cases of these States, it is three miles at sea, **except in Texas and Florida, where it is, of course, three leagues.**" (appendix 44).

19. **House Report No. 1778, accompanying H. R. 5992, 2nd Session, 80th Congress,** which was substantially identical with the Submerged Lands Act of 1953, which was made a part of House Report No. 215, accompanying the Submerged Lands Act (H. R. 4198), states that:

"**In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending three marine leagues seaward and a like distance into the Gulf of Mexico.** Texas' boundary was fixed three leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement." (page 1427, Legislative History Commentaries, 83rd Congress, 1st Session, published by

West Publishing Company and Edward Thompson Company.)

The above quoted language from House Report No. 1778, appeared in Senate Report No. 1592, which accompanied S. B. 1988, of the 2nd Session of the 80th Congress, which Senate bill was substantially identical, if not identical, with the present Submerged Lands Act (page 1516, Legislative History Commentaries, supra).

20. **We find in House Report No. 215,** supra, statements to the effect that the proposed legislation "deals with the rights and claims by the States to lands and resources beneath navigable waters **within their historic boundaries** . . . ," and that the term "boundaries," as used in the Submerged Lands Bill and similar bills "includes the **historic seaward boundaries** of the States in the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico . . . as they were upon entrance of the State into the Union or as has been or shall be approved by Congress. . . ." House Report No. 695, of the First Session of the 82nd Congress, which accompanied a bill substantially identical with the Submerged Lands Act, stated that said bill "recognizes, confirms, vests and establishes in the States the title to the sub-

merged lands **which they have long claimed,** over which they have always exercised all the rights and attributes of ownership . . . ."

The government in its brief (pages 270, et seq.) gives extracts taken from arguments made in Congress concerning the constitutions of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida, submitted under and pursuant to the Acts of Congress of March 2 and 22, 1867 (14 Stat. 428 and 15 Stat. 1) and which were recognized and approved by the act of June 25, 1868 (15 Stat. 73), showing the attitude of certain members of Congress upon the authority of Congress in connection with the said constitutions so submitted. These extracts merely show the attitude and thoughts of certain members of the Congress, and not what Congress actually did in the matter. Reference in this connection may be made to pages 2414, 2436, 2437, 2445, 2447, 2448, 2461, 2465, 2858, 2859, 2862, 2927, 2930, 2931, 2934, 2935, 2968, 2969, 2998, et seq., 3017, 3018, 3022, 3090, 3091 and 3093, of the Congressional Globe, 2nd Session, 40th Congress, as well as pages 239, 279 and 349 of the appendix to said Globe. See also Congressional Globe of the 41st Congress, 2nd Session, page 253 and appendix pages 19, 27, 29, 31, 36, 37, 42, 45, 69, 72 and 118, for such proceedings before Congress and what actually

transpired.

Conclusions.—The authorities, facts and circumstances presented from this portion of this brief demonstrate that:

(1) The Submerged Lands Act dealt with the claims of the coastal states to lands and resources within and beneath the navigable waters within their historic boundaries; which act merely fixes as law of the land that which, throughout our history prior to the decision of this Court in the California case, in 1947, was generally believed to be the law of the land.

(2) The term, **"heretofore approved by Congress,"** used in connection with historic state boundaries, requires neither a formal or express approval by Congress; there being no requirement that the approval by Congress be a formal or express approval, such approval, like the consent or approval of Congress required under clause 3, section 10, article I, of the United States Constitution, to compacts between states, may be implied from circumstances.

(3) Committee reports, legislative records, and statements of members of Congress (First Session, 83rd Congress) clearly

show that Congress had in mind the Florida Constitution of 1868 when the provisions of the Submerged Lands Act relative to **Approval By Congress** of state boundaries subsequent to statehood was written into the said act. The Congress of 1868, by its approval, whether implied or express, of the Florida Constitution of 1868, approved the Florida state boundaries set out in the said constitution.

(4). The Reconstruction Acts of 1867 required that the rebel states adopt (new) state constitutions (not parts or portions of constitutions, but entire constitutions) to be "submitted to Congress for examination and approval. . . ." Had any part of the state constitution submitted to Congress by Florida in 1868, which was clearly before Congress for examination and determination whether it met the requirements of the Reconstruction Acts, failed to meet the approbation of the Congress it is reasonable to suppose that its dissent would have been expressed in some form. After Florida's 1868 Constitution was submitted to Congress, her representatives to Congress were qualified and seated; it must, therefore, be presumed that the entire state constitution received the approval of Congress, otherwise the delegation to Congress from Flor-

ida would not have been seated.

(5) It is apparent that the description of the boundaries of Florida, contained in the Florida Constitution of 1868, was "approved by Congress," within the purview and intent of the Submerged Lands Act.

(6) The defendant states may acquire, hold and administer property and property rights beyond their territorial limits, including property and property rights claimed by the United States and transferred to them.

— B —

FLORIDA'S SEAWARD BOUNDARY IN THE GULF OF MEXICO EXTENDED MORE THAN THREE GEOGRAPHIC MILES INTO THE SAID GULF FROM HER COAST LINE, PRIOR TO AND AT THE TIME SHE BECAME A MEMBER OF THE UNION.

Boundary at time of statehood.—The Act of Congress of March 3, 1845 (5 Stat. 742) admitting Florida as a State of the Union, provided that "said State of Florida shall embrace the Territories of East and West Florida, **which by the Treaty of Amity, Settlement and Limits** be-

tween the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, **were ceded to the United States"** (emphasis supplied). This raises the question of what were the boundaries of the Territories of East and West Florida, which were ceded to the United States by Spain by the said Treaty of Amity, Settlement and Limits. The Act of Congress of March 30, 1822 (3 Stat. 654) establishing the Territory of Florida provided that the said Territory consisted of the **"Territory ceded by Spain to the United States, known by the name of East and West Florida"** (emphasis supplied). Section 1, Article XII, of Florida Constitution of 1838, provided that "The jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which by the Treaty of Amity, Settlement and **Limits,** between the United States and His Catholic Majesty, on the 22nd day of February, A. D. 1819, **were ceded to the United States** (emphasis supplied). Spain, by Article II, of the Treaty of Amity, Settlement and Limits of February 22, 1819, ceded to the United States **"all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida.** The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents

which relate directly to the property and sovereignty of said province, are included in this article." (emphasis supplied).

Boundaries of the Floridas at time of treaty with Spain.—Under the Florida Statehood Act (5 Stat. 742), as well as under her State Constitution at time of statehood (State Constitution of 1838), the territories of the state embraced "the Territories of East and West Florida, which by the Treaty of Amity, Settlement . . . were ceded to the United States." This leads to an inquiry as to the extent of the territories **so ceded by Spain to the United States.** Spain obtained the Floridas from Great Britain, through the "Definitive Treaty of Peace and Friendship," signed at Versailles on September 3, 1783, by which "His Britannic Majesty moreover cedes and guarantees, in full ownership, to His Catholic Majesty, Eastern as well as Western Florida;" however, without any more specific description of boundaries. Prior to said cession of the Floridas to Spain on September 3, 1783, the King of England, by proclamation of October 7, 1763 (Annual Register, 1763, pages 208 ff) declared that "The Government of East Florida, (was) bounded to the Westward by the Gulf of Mexico and the Apalachicola river . . . and to the East and South by the Atlantic Ocean and the Gulf of Florida, **including all islands within six leagues of the sea coast . . . ,**" and

that "The Government of West Florida (was) bounded to the Southward by the Gulf of Mexico, **including all islands within six leagues of the coast,** from the river Apalachicola to Lake Pontchartrain. . . ." Each of these descriptions contains the phrase **"including all islands within six leagues of the coast."** The treaty of September 3, 1783, transferred to Spain the territories described by the said proclamation of October 7, 1763. England had obtained the Floridas from Spain through the Definitive Treaty of Friendship and Peace, concluded at Paris on February 10, 1763, by which Spain ceded and guaranteed "in full right, to his Britannic Majesty Florida, with Fort St. Augustine and the Bay of Pensacola, **as well as all that Spain possesses on the continent of North America to the east or to the southeast of the river Mississippi;** and in general, everything that depends on said countries and lands, with the sovereignty, property, possession, and all rights, acquired by treaties or otherwise, which the Catholic King and Crown of Spain have had till now over said countries, lands, places and their inhabitants. . . ." (emphasis supplied).

Florida's boundaries compared to other Gulf states.—It seems clear from the above and foregoing that the boundaries of the State of Florida at the time of statehood, and as described in her constitution of 1838, embraced the territory

ceded by Spain to the United States by the treaty of February 22, 1819. Spain, having obtained the Floridas from Great Britain in 1783, it must be presumed that she obtained the territory claimed by Great Britain under the above proclamation of October 7, 1763, which described the Floridas being bounded by the Gulf of Mexico, "including all islands within six leagues of the sea-coast. . . ." **The Louisiana Enabling Act** (2 Stat. 641) and act for admission into the Union (2 Stat. 701), which are set out on pages 324-326 of the plaintiff's brief, described the state boundaries as ". . . , thence bounded by the said gulf to the place of beginning, **including all islands within three leagues of the coast. . . .**" **The Mississippi Enabling Act** (3 Stat. 48) and state constitution of 1817 and resolution admitting her to the Union (plaintiff's brief 252, et seq.) described her boundaries as ". . . , thence due south to the Gulf of Mexico, thence westwardly, **including all islands within six leagues of the shore,** to the most eastern junction of Pearl River with Lake Borgne. . . ." The Alabama Enabling Act (3 Stat. 489) and constitution at time of statehood (plaintiff's brief page 260) described her boundaries as ". . . , thence due south, to the Gulf of Mexico, thence eastwardly, **including all islands within six leagues of the shore,** to the Perdido river. . . ." **The statehood description of Flor-**

ida, as to boundary in the Gulf of Mexico, being in substance the same as Louisiana, Mississippi and Alabama, the same rules of construction are applicable to it as are applicable to the boundary description of the said other three states; this being true, Florida adopts their arguments on this point as the argument of Florida.

Spain's boundary claims at or near time of cession of the Floridas to the United States.— In a Preliminary Treaty between Great Britain, France and Spain, of November 3, 1762 (1 Martens 92) it was stipulated that fishing in the Gulf of St. Lawrence should not be exercised "but at a distance of **three leagues** from all the coasts belonging to Great Britain. . . ." In a convention between France and Spain of December 27, 1774 (2 Martens 362) it was stipulated that boats up to 100 tons displacement found carrying any kind of contraband were prohibited from being within **two leagues** on the sea of ports, mouths of rivers, and landing places on the coast. To the same effect see Spanish Royal Resolution of May 1, 1775 (2 Riquelme 197). By the Treaty of Peace and Commerce of December 24, 1782, between Spain and the Ottoman Empire, it was stipulated that the parties would not permit ships of the other **within sight** of their coast to be chased or molested. It was stipulated in the Treaty of Peace and Amity between Spain and Tripoli, of September 10, 1784,

that "Tripolitanian warships and privateers can not capture any vessel belonging to their enemies at a distance of **ten leagues** from the coasts of the dominions of Spain" (3 Martens 402, 414; 1 Ferrater 488-489). Under the Treaty of Peace and Amity between Spain and Algeria, of June 14, 1786 (4 Martens 126) it was stipulated that where a Spanish merchant ship was attacked by the enemies of Spain **within a cannon shot** of an Algerian fortress that the fortress must defend and protect it. According to the Convention between Great Britain and Spain, of October 28, 1790 (1 B. F. S. P. 666), it was stipulated that British subjects should not navigate, or carry on their fishery within the space of **ten sea leagues** of the coasts already occupied by Spain. A Spanish decree of May 3, 1830 (2 Riquelme 200), stipulated that ships of less than two hundred tons carrying contraband should not sail within six marine miles from Spanish territory. In the correspondence between William H. Seward, Secretary of State of the United States, and Horatio J. Perry, Madrid, Spain, of August 14, 1863, it seems evident that Spain claimed an international boundary around Cuba of six marine miles or two leagues. (Diplomatic Correspondence of 1863, part 2, page 905). Other correspondence between Secretary Seward and a Mr. Burnley, of September 16, 1864, shows that Spain then claimed a six mile or two league international

boundary around Cuba. (Diplomatic Correspondence of 1864, page 708).

In the Treaty of Peace, Friendship, Limits and Settlement, between the United States and Mexico, signed at Guadalupe Hidalgo February 2, 1848, the boundary between the two republics was declared to "commence in the Gulf of Mexico, **three** leagues from land, opposite the mouth of the Rio Grande. . . ." (37 B. F. S. P. text 569-571). This boundary in the Gulf of Mexico was repeated in the Treaty of Limits, entered into by the same parties, on December 30, 1853 (42 B. F. S. P., text 725-726). The President of the United States by proclamation of June 2, 1856 (47 B. F. S. P. 789-790) declared the boundary between the United States and Mexico as "beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande" as provided in the above mentioned treaties. Mexico prior to its cession was a territory of Spain, and doubtless claimed the same seaward boundary as was claimed by Spain.

I. Ovchinnikov (Morskoi Sbornik, 1-2, 1899, page 60) in his discussion of the extent of the Territorial Sea, states that certain states take the extent of the territorial sea to be three miles, **Spain six miles**; Norway, four miles, etc. Amos S. Hershey, in his "The Essentials of Interna-

tional Public Law," 1912, stated that "in 1894, the Institute of International Law, after an exhaustive discussion on the question, voted by a decisive majority . . . in favor of a zone of six marine miles for all territorial purposes . . ." (page 340 ff). Jesse S. Reeves, in his article on Codification of the Law of Territorial Waters (24 American Journal of International Law, 1930, at page 492), remarks that "the following countries declared for a six mile width: Brazil, Colombia, Cuba, **Spain**, Italy, Latvia, Persia, Portugal, Roumania, Turkey, Uruguay, Yugoslavia, twelve . . . ." Green H. Hackworth, in his Digests of International Law, 1940, by a table shows that Spain at the Conference held at The Hague in 1930 favored a seaward boundary of six marine miles. At the recent conference held in Geneva, Switzerland, as per table prepared by the Secretariat, Spain claimed a territorial sea of six miles.

Seaward boundaries between 1763 and 1870. —Thomas Jefferson, as Secretary of State, on November 8, 1793, advised George Hammond, British Minister, in part as follows:

> ". . . The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated upwards of twenty miles, and the smallest distance I

believe, claimed by any nation whatsoever is the utmost range of a cannon ball, usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessel of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation . . ." (6 Writings of Jefferson, pages 441 and 442).

Chancellor Kent stated the attitude of the United States on this question as follows:

". . . in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, the natural indication furnished by the well defined path of the Gulf Stream, to expect an immunity for belligerent warfare, for the space between that limit and the American shore." (1 Kent, Commentaries of American Law, 1826 edition, page 30).

Chief Justice Marshall, in Church v. Hubbart, 6 U. S. (2 Cranch) 187, text 235, 2 L. ed. 249, text 265, stated that,

". . . In different seas, and on different coasts, a wider or more contracted range, in which to exercise the vigilance of government, will be assented to. Thus in the channel, where a very great part of the commerce to and from the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by vessels but for the purpose of illicit trade, the vigilance of the government may be extended somewhat further . . . ."

Long before Jefferson, publicists of many nations advocated three leagues as the proper extent of national territorial jurisdiction.

These recommendations continued, irrespective of the range of cannon, until well after 1870. Three leagues was used in treaty practices of states from 1763 to 1899. (see Joint or Common Brief of defendants, pages 84 to 88).

Conclusion.—It seems evident from the above authorities that Spain, when she ceded the Floridas to the United States in 1819, claimed a tertorial sea for the Floridas in excess of one marine league or three miles. There is ample evidence that at least a three league boundary was

claimed by Spain and ceded by her to the United States under the above treaty of 1819. This being true, Florida's seaward boundaries, under her constitution and act of admission, extended beyond three geographic miles into the Gulf of Mexico, to wit, not less than three leagues.

— C —

THE SO-CALLED INTERNATIONAL THREE MILE BOUNDARY IS NOT AN ABSOLUTE NATIONAL OR STATE BOUNDARY, BUT IS A BOUNDARY LIMITED FOR CERTAIN PURPOSES.

Two separate governments involved, neither complete within itself.—"We have in our political system a government of the United States and a government of each of the several states. Each one of these governments is distinct from the others." (United States v. Cruikshank, 92 U. S. 542, text 549, 23 L. ed. 588, text 590). "The people of each state compose a state, having its own government, and endowed with all the functions essential to separate and independent existence" without which there "could be no such political body as the United States" (County of Lane v. Oregon, 74 U. S. 71, text 76, 19 L. ed. 101, text 104; Texas v. White, 74 U. S. 700, text 725, 19 L. ed. 227, text 237). In the United States "the powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign with

respect to the objects committed to it, and neither sovereign, with regard to the objects committed to the other" (McCulloch v. Maryland, 17 U. S. 316, text 410, 4 L. ed. 579, text 602). "The powers of the General Government, and of the State, although both exist and **are operated within the same territorial limits,** are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres" (Feldman v. United States, 322 U. S. 487, text 491, 64 S. Ct. 1082, 154 A. L. R. 982, 88 L. ed. 1408, text 1413; see also Ableman v. Booth, 62 U. S. 506, text 516, 16 L. ed. 169, text 173). "The governments of the States possess all the powers of the Parliament of England, except such as have been delegated to the United States or reserved by the people" (Carter v. Carter Coal Company, 298 U. S. 238, text 294, 56 S. Ct. 855, 80 L. ed. 1160, text 1180). See also Buffington v. Day, 78 U. S. 113, text 124, 20 L. ed. 122, text 126; Chisholm v. Georgia, 2 U. S. 418, text 435; 1 L. ed. 440, text 447; Burnet v. Brooks, 288 U. S. 378, text 396, 53 S. Ct. 457, 77 L. ed. 844, text 852, 86 A. L. R. 747; Fong Yue Ting v. United States, 149 U. S. 698, text 711, 13 S. Ct. 1016, 37 L. ed. 905, text 912.

Federal powers.—"As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government nec-

essary to maintain an effective control of international relations" (Burnet v. Brooks, 288 U. S. 378, text 396, 53 S. Ct. 457, 86 A. L. R. 747, 77 L. ed. 844, 852; see also Carter v. Carter Coal Company, 298 U. S. 238, text 295, 56 S. Ct. 855, 80 L. ed. 1160, text 1180; Fong Yue Ting v. United States, 149 U. S. 698, text 705, 13 S. Ct. 1016, 37 L. ed. 905, text 910). "The determination of the Framers Convention and the ratifying conventions to preserve complete and unimpaired state self-government in all matters not admitted to the general government is one of the plainest facts which emerges from the history of their deliberations. And adherence to that determination is incumbent upon the federal government and the states. State powers can neither be appropriated on the one hand nor abdicated on the other" (Carter v. Carter Coal Company, supra). The powers of the general government differ "in respect of foreign or external affairs and those in respect to domestic or internal affairs. That there are differences between them, and that these differences are fundamental, may not be doubted. The two classes of powers are different, both in respect of their origin and their nature." The statement that the federal government is entirely one of delegated powers "is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possess-

ed by the states such portion as it was thought desirable to vest in the Federal government, leaving those not included in the enumeration still in the states . . . ." (United States v. Curtiss-Wright Export Corporation, 299 U. S. 304, text 315 and 316, 57 S. Ct. 216, 81 L. ed. 255, text 260). We are here dealing not with some relationship between the United States and a foreign power, but with a question of ownership of property and property rights as between the United States and some of the States of the Union. There is at present no argument between the United States and a foreign power as to the location of the international boundary of the United States, or of the State of Florida, in the Gulf of Mexico.

State powers.—When the United States Constitution was adopted it carved from the general mass of legislative powers then possessed by the state (the general powers of independent nations) such portion as it was thought desirable to vest in the federal government, leaving all other powers of nations vested in the states. Thus the general powers of sovereignty are divided between the states and the federal government; each being completely sovereign as to the powers possessed by it. These powers are usually operated within the same territorial limits. Only in the field of international relations is the federal government completely sovereign. Al-

though the general government may not delegate to the states control of international relations, there is no rule of law preventing it transferring to the states property and property interests held by it, although such property and property rights may lie outside of the so-called international three-mile boundary.

National boundaries for different purposes.— At the United Nations Conference on the Law of the Sea held in Geneva, Switzerland, in 1958, the First Committee (Territorial Sea and Contiguous Zone) passed a resolution at its fourteenth meeting, March 13, 1958, requesting the Secretariat to draft a synoptical table listing the breadth of the territorial sea and the breadth of special purpose provisions, which table divides the special purpose areas or boundaries into provisions relating to **Customs, Security, Criminal Jurisdiction, Civil Jurisdiction, Fishing, Neutrality** and **Sanitary regulations.** It appears from this table that such special jurisdictions often differ considerably from the general breadth of the so-called territorial sea. To the same effect see also the table to the work entitled Problema Territorial 'nykh vod v Mezhdunarodom Prave Soviet (Science of International Law on the Concept of Territorial Waters) A. N. Nikolaev, Moscow; Gosudarsvennoe Izdatel'stvo Yuridicheskoi Literatury, 1954. These special zones were mentioned by

I. Ovchinnikov, in his work on the territorial sea published in 1899. Special territorial limits were provided for in the Preliminary Treaty between Great Britain, France and Spain, of November 3, 1762, article III (1 Martens 92) and a treaty between the same parties of February 10, 1763 (1 Martens 108), and in the Convention of October 28, 1790 between Great Britain and Spain, relative to America (1 F. S. P. 663). Other examples are the liquor treaties (Philip C. Jessup, The Law of Territorial Waters and Maritime Jurisdiction, pages 279-352) and the fisheries treaties (Colombo, International Law, 3rd, 110-122, sections 121-130), and the British "Hovering Acts" passed at the beginning of the eighteenth century. Other examples might be given. These authorities clearly show that the so-called special zones are in fact special territorial limits for specific purposes. A state may have different boundaries for different things, although they may be designated as special zones or otherwise.

This Court, in United States v. California, 332 U. S. 19, text 35, 67 S. Ct. 1658, 91 L. ed. 1889, text 1897 (quoted with approval in United States v. Texas, 339 U. S. 707, text 718, 70 S. Ct. 918, 94 L. ed. 1221, text 1227), stated that:

> "The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from

dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations . . . ."

Purpose of Section six of Submerged Lands Act.—The retention of rights and powers to the United States, by section 6 of the Submerged Lands Act (section 1314, title 43, United States Code; 67 Stat. 32), was evidently designed to enable the United States to carry out the duties and obligations mentioned in the above quotation from United States v. California, supra, notwithstanding the transfer of certain prop-

erty and property rights to the states by the Submerged Lands Act. This section of the statutes provides that:

> (a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 1311 of this title.
>
> (b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor. May 22, 1953, C. 65, Title 11, §6, 67 Stat. 32.

Hackworth, in his Digest of International Law, page 674, makes the following observation:

> ... Vattel's statement: 'Who can doubt that the pearl fisheries of Bahrein and Ceylon may lawfully become property?' ceases to cause any difficulty to even the stoutest upholders of the principle that the limits of the territorial belt are not more than three miles **if it is realized that the exclusive right to the pearls to be obtained from the banks flowed from the ownership of the bed of the sea where the banks were situated, and not from any claim to maritime jurisdiction over the waters.** (emphasis supplied)

And on page 676:

> It cannot be too strongly emphasized that **the recognition of special property rights in areas of the bed of the sea outside the marginal belt for the purpose of sedentary fishing does not conflict in any way with the common enjoyment by all mankind of the right of navigation of the waters lying over those beds or banks.** Nor does it entail the recognition of any special or exclusive right to the capture of swimming fish over or around these beds or banks. (emphasis supplied)

Oppenheim, in the last edition of his treatise on International Law, states that:

> Since the open sea is free, no part of it can be the object of occupation, nor can rocks or banks in the open sea, although lighthouses may be built on them. Likewise the bed of the sea cannot be an object of occupation, but the **subsoil of the bed of the open sea** may become the object of occupation through driving mines and piercing tunnels from the coast.
>
> . . . Although it is traditional to base some of these cases on the ground of prescription, it is submitted that it would be not inconsistent with principle, and would be more in accord with practice, to recognize frankly that, as a matter of law, a State may by strictly local occupation acquire, for sedentary fisheries and for other purposes, sovereignty and property in the surface of the sea-bed, provided, that in so doing it in no way interferes with freedom of navigation and, perhaps we should add, with the breeding of free-swimming fish.
>
> . . . The rationale of the open sea being free and forever excluded from occupation on the part of any State is that it is an international highway, which connects distant

lands, and thereby secures freedom of communication, and especially of commerce, between States separated by the sea. There is no reason whatever for extending this freedom of the open sea to the subsoil beneath its bed. On the contrary, there are practical reasons—taking into consideration the building of mines, tunnels, and the like—which compel recognition of the fact that this subsoil can be acquired through occupation.

General reference is here made to pages 672 to 680 (section 200), Hackworth's Digest of International Law, Volume II.

See also Colombo International Law of the Sea, at pages 56, 58, 59, 306, 307, sections 73, 75 and 353; Juraj Andrassy's Epikontinental Nipojas (Zagreb, 1951); paper prepared by William W. Bishop, Jr., Professor of Law, University of Michigan Law School, for the Sixth Conference of the Inter-American Bar Association, May 1949; Charles Rousseau, Droit International Public, 1953, page 442; and T. Nakamura, writing in the Journal of Law, Politics and Sociology, Hogaku Kenkyu, Volume 27, pages 27, ff.

Theory of Presidential Proclamation, etc.—The Presidential Proclamation No. 2667 of

September 28, 1945 (10 Fed. Reg. 12, 303), contains the following sentence:

> The character as high seas of the waters above the continental shelf and the right of their free and unimpeded navigation are in no way thus affected.

And, the Submerged Lands Act, in section six thereof, provides that the

> United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs . . . .

These provisions seem to have in mind and to substantially follow the separation and separate administration of the high seas and of the submerged lands and the minerals and other things therein.

Conclusion.—Although the Government of the United States and the Government of the several States of the Union are separate and distinct governments, neither is completely sovereign within itself. The powers of sovereignty, in the words of this court in McCulloch v. Maryland, 17 U. S. 316, 4 L. ed. 579, "are divided

between the government of the Union and those of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign, with regard to the objects committed to the other." The powers of the General Government, and of the States, in the words of this court in Feldman v. United States, 322 U. S. 487, 64 S. Ct. 1082, 88 L. ed. 1408, "Although both exist and are operated within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres." We are here dealing directly with a question of ownership of property and property rights, and the conveyance and transfer of such property and property rights from the United States to the Gulf Coast States, and only incidentally with questions of international boundaries. We are here dealing with the ownership of property and property rights within the lands under the sea and not with a question of maritime jurisdiction over the waters of the sea. The special property and property rights here considered lie under the waters of the sea and such ownership does not in any way conflict with the enjoyment of the right of navigation of the waters lying over the sea where such property and property rights are located. A clear distinction may be drawn between the bed of the sea and its subsoil. The property and property rights here involved belong to the subsoil under

the sea rather than to the sea itself. We, therefore, submit that the three mile international boundary, even if here applicable, relates only to the use of the high seas, including the use of the floor of the sea for the purposes of anchoring boats and vessels, and do not constitute an absolute state or national boundary. It is a boundary limited for certain purposes. It does not prevent a conveyance and transfer of property and property rights to a state although such property and property rights may lie without the boundaries of such state.

Second question.

IS THE UNITED STATES ENTITLED TO AN ACCOUNTING BY THE STATE OF FLORIDA FOR ANY SUMS OF MONEY DERIVED BY HER AFTER JUNE 5, 1950, FROM SUCH LANDS, MINERALS AND OTHER THINGS LYING OFF HER COAST?

Release of claims against the states.—Congress, by the Submerged Lands Act of May 22, 1953, in addition to the conveyance and transfer of the property and property rights therein described to the defendant states, also released and relinquished "all claims of the United States, if any it has, for money or damages arising out of any operations of said states or per-

sons pursuant to state authority upon or within said lands and navigable waters," (43 U. S. C. Supp. V, 1311), that is, the lands, minerals and other things conveyed by the Submerged Lands Act. It is clear from the arguments made in the joint and common brief of the defendant states, and in this brief of the State of Florida, that the properties which are made the subject matter of this litigation passed by the Submerged Lands Act to the State of Florida and that any claims for damages or otherwise, which the United States may have had, prior to the enactment of the said Submerged Lands Act, against the State of Florida, were released to the said state by the Submerged Lands Act, so that, nothing is now due or owing by the State of Florida to the United States in this connection.

CONCLUSION

In conclusion, the State of Florida, one of the defendants herein, submits that:

1. The present controversy is a domestic dispute, as to the geographical extent of the property and property rights transferred to the defendant states by the Submerged Lands Act, which Act granted the property and property rights therein described to the states and did not fix state and national boundaries, or either of them.

2. The property and property rights described in the Submerged Lands Act were property and property rights belonging to the United States subject to conveyance and transfer by Congress pursuant to clause 2, section 3, Article IV, of the United States Constitution, whether located within or without state boundaries.

3. There is no prohibition, legal or otherwise, against a State of the Union taking title to and owning and administering property and property rights, including the lands, minerals and other things described in the said Submerged Lands Act, located beyond its state boundaries.

4. Florida's historical boundaries in the Gulf of Mexico, under the provisions of the said Submerged Lands Act, include the boundaries described in Article "I" of the Florida Constitution of 1868, which were approved by Congress within the purview and intention of the said Submerged Lands Act.

5. Congress, while considering legislation which became the Submerged Lands Act, as well as like and similar other legislation, clearly, as is shown by Congressional and Committee records and reports,

had in mind the Florida Constitution of 1868 and the proceedings in the 1868 Congress concerning the adoption and approval of the same.

6. Congress, prior to the effective date of the Submerged Lands Act (May 22, 1953), and during its 1868 session or sessions, approved the boundaries of the State of Florida as set out in the Florida Constitution of 1868; that is, a boundary three leagues from low-water mark in the Gulf of Mexico.

7. Florida's seaward boundaries in the Gulf of Mexico, at the time she became a member of the Union, extended three marine leagues or more into the Gulf of Mexico from the low-water mark. Florida was admitted into the Union as embracing the "Territories of East and West Florida, which, by the Treaty of Amity, Settlement, and Limits between the United States and Spain . . . were ceded to the United States." Spain claimed and was possessed of a seaward boundary in the Gulf of Mexico of three leagues at the time of the said cession to the United States.

8. The so-called international three mile boundary, if a boundary at all, is but a

limited one, used primarily for seafaring purposes and not as an absolute boundary for all purposes. There appears to be different international boundaries for different purposes; for example, Customs, Security, Civil and Criminal Jurisdiction, Fishing, Neutrality, Sanitary Regulations, etc.

9. Neither the United States nor the States of the Union are strictly sovereign within themselves, each being limited sovereigns (but neither completely sovereign), operating within the same territory in continental United States. The right and power of the several states to own and hold property and property rights beyond their boundaries are equal to, if not greater than, that of the United States.

10. (a) The effort of the plaintiff to defeat Florida's rights acknowledged or granted by the Submerged Lands Act is manifestly a die-hard one. Despite the abrogation by the Congress of the Presidential Proclamation No. 2667, September 28, 1945, 10 Fed. Reg. 12303, 59 Stat. 884, preempting the tidelands and the resulting modification of the effect of the decisions in the California (322 U. S. 19), Louisiana (339 U. S. 669) and Texas (339 U. S. 707)

cases, and notwithstanding this Court's recognition of the authority of Congress to so abrogate (Alabama v. Texas, 347 U. S. 272), the plaintiff advances in this case the most surprising and anomalous claims.

(b) To accomplish its objective of defeating the rights granted the Gulf states by the Submerged Lands Act plaintiff interjects clearly irrelevant claims based on theories of international law and then surmounts these tangential contentions by denying that Congress approved Florida's 1868 state constitutional boundary. It denies settled and unquestioned historical facts and shrugs off the action of the Congress and the President in adjusting the long standing tidelands controversy. It asks the Supreme Court of the United States to depart from plain, unmistakable principles of law, to forsake common understandings agreed upon in the nation's highest legislative councils, to abjure and disown its own latest precedent and accept in lieu the most amazing, if not shocking, farfetched contentions imaginable.

(c) The plaintiff does not and cannot contend the Submerged Lands Act is unconstitutional. Alabama v. Texas, 347 U. S. 272. However, it seeks to attain the same

result by maintaining the Act is overridden by principles of international law insofar as the Gulf states' historic boundaries are employed as a measure for the grant of proprietary rights. This proposition is advanced in the face of Presidential and Congressional official action to the contrary. It also flies in the face of applicable decisions of this Court that Congress is the ultimate determiner of national policy in fixing boundaries and in disposing of property rights of the nation.

(d) We submit it is highly inconsistent for the plaintiff to claim for the United States all of the rights of the Outer Continental Shelf Lands Act granted by the Congress, yet in the same breath deny that the Congress can grant similar rights to the Gulf Coastal States. Why is it that if international law regulating claims of all nations precludes the Gulf States from the benefits of the Submerged Lands Act, the same law does not likewise deny the United States the same benefits?

(e) We submit further it is especially inconsistent for plaintiff to claim that Congress did not approve Florida's gulf-coast boundaries in 1868 in its Reconstruction Constitution of that year when for

ninety years the Congress has raised no question concerning these settled boundaries and has allowed the state to function under this and a succeeding constitution with identical state boundaries and exercise recognized and traditional state jurisdiction within these boundaries.

(f) We cannot believe that the Court will on the basis of the unreal contentions advanced by the plaintiff open this old sore and leave for judicial history a decision utterly contrary to what every one who had any knowledge of the subject knows was never intended by the Submerged Lands Act.

(g) We have demonstrated that the Submerged Lands Act had direct reference to Florida's boundaries as contained in its 1868 Reconstruction Constitution which was approved by Congress that same year. We have shown that this boundary by the express language of the 1868 State Constitution and as repeated in the present state constitution extends three marine leagues into the Gulf of Mexico. Consequently, we respectfully submit that the State of Florida is entitled to judgment against the plaintiff.

Respectfully submitted,

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